

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Robert Gibson,)
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Plaintiff,)
)
)
v.) Case No. 3:15-CV-204-PLR-HBG
)
)
CH2M Hill Constructors, Inc., and)
The Standard Insurance Co.,)
)
Defendants.)

Memorandum Opinion and Order

On April 8, 2015, the plaintiff Robert Gibson filed a complaint against CH2M Hill Constructors and The Standard Insurance Co. in the Chancery Court for Knox County, Tennessee, alleging causes of action for breach of contract, specific performance, and breach of fiduciary duty arising from their failure to perform under an insurance policy. [R. 1-2]. The defendants timely removed the action pursuant to 28 U.S.C. § 1331 and 1441 because the insurance policy at issue is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”). [R. 1]. Shortly thereafter, the defendants moved to dismiss the plaintiff’s state law claims on grounds that ERISA completely preempts them. 29 U.S.C. § 1144(a). [R. 13, 15].

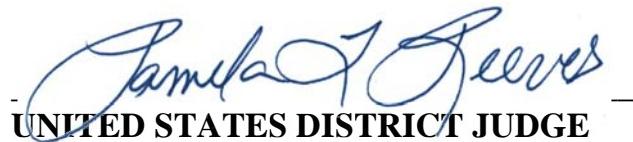
The plaintiff responded by acknowledging that his claims are governed by, and pre-empted by, ERISA. Accordingly, the plaintiff contends that his claims should be recharacterized from state law claims to ERISA claims. The Court finds, however, that it would be more appropriate for the plaintiff to amend his complaint to formally allege his ERISA claims. *See*

Fed R. Civ. P. 15(a)(2) ("The court should freely give leave [to amend the pleadings] when justice so requires."). This is consistent with this Court's previous rulings in similar situations.

See, e.g., Hall v. Prudential Co. of America, 2014 WL 1513269 (E.D. Tenn. April 15, 2014).

Accordingly, the defendants' motions to dismiss [R. 13, 15] are **Granted** to the extent that the plaintiff's state law claims are **Dismissed, with prejudice**. The plaintiff is directed to file an amended complaint restating his claims under ERISA within 14 days of entry of this order. Failure to comply with this order will result in dismissal of his complaint with prejudice. The plaintiff shall file his motion for summary judgment within 60 days of entry of this order, and the defendants shall file their cross-motion/response 30 days thereafter.

IT IS SO ORDERED.



Pamela J. Gevers
UNITED STATES DISTRICT JUDGE